As we are of the view that the caveat was wrongly entered, we are also of opinion that the Registrar ought to have registered the documents when presented on December 14, 1972 and the prohibitory orders lodged on December 27, are therefore inconsequential and ineffective, and must be set aside.

We would allow the appeals with costs and set aside the orders of the learned judge. The prayers of the appellants in the Originating Motion No. 4 of 1973 and Civil Actions Nos. 116 and 117 are granted and pursuant to section 417(1) of the National Land Code we order that the registering authority do accept the transfer and associated documents presented on December 14, 1972 and cause all necessary entries and memorials to be made in the issue and register documents of title for the second appellants to be registered as proprietors of the lands freed from encumbrances. The deposit will be refunded to the appellants.

Appeals allowed.

Solicitors: *Allen & Gledhill.*

OH KENG SENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Hashim Yeop A. Sani J.) June 10, 1974]
[Seremban — Miscellaneous Criminal Application No. 2 of 1974]

Criminal Law and Procedure — Transfer of case — Criminal Procedure Code (F.M.S. Cap. 6), s. 417 — Object of section to ensure a fair and impartial trial — Exception to ordinary rule on jurisdiction venue — When power under section to be exercised.

This was an application under section 417 of the Criminal Procedure Code for the transfer of the case. The affidavit of the applicant did not show that a fair and impartial trial could not be had in the court before which the applicant was charged.

Held: (1) the provisions of section 417 of the Criminal Procedure Code should be construed as an exception to the ordinary rule on jurisdiction and venue of hearing. The power of transfer contained therein should only be exercised if it appears to the court that not to do so may result in an unfair or unimpartial trial or otherwise appears to the court expedient in the interests of justice;

(2) in this case the application had no merit and must be dismissed.

CRIMINAL APPLICATION.

Yeap Ghim Guan for the applicant.

Suleiman bin Hashim (Senior Federal Counsel) for the respondent.

Hashim Yeop A. Sani J.: At the outset I would like to make a few general observations with regard to this application. First, the application is made under section 417 of the Criminal Procedure Code. It should be borne in mind that broadly speaking, the primary object of that section is to ensure a fair and impartial trial. I have examined the affidavit of the applicant and have found nowhere in the affidavit to show that a fair and impartial trial cannot be had in the court before which the applicant is charged. Secondly, section 417 of the Criminal Procedure Code should be construed as an exception to the ordinary rule on jurisdiction and venue of hearing. The power of transfer under this section should in my view be exercised only if it appears to the court that not to do so may result in an unfair or unimpartial trial or otherwise appears to the court expedient in the interest of justice. Thirdly, an offence of sedition under section 4 of the Sedition Act, 1948 is an ordinary criminal offence which should normally be tried in the ordinary court of appropriate jurisdiction. The fact that a politician is involved by itself alone should not alter the position. The assurance given by the Hon'ble Deputy Prime Minister reproduced in the exhibit of the affidavit of the applicant should only be considered in the light of section 5 of the Sedition Act, 1948 in that the Public Prosecutor has power to designate any court within Malaysia to be the court of trial in the first instance. This section should however be construed without prejudice to the power of this court to make an order of transfer under section 417 of the Criminal Procedure Code if it is considered just to do so.

More specifically, the decision on this application may be made after considering paragraph (b) of section 417 of the Criminal Procedure Code that is, if it appears to the court that some question of law of *unusual difficulty* is likely to arise the court may order that the case be transferred to and tried before itself. The use of the word "unusual" in that paragraph would seem to me to indicate that the difficulty in relation to the law involved must be such that either the question of law is one which is unique or out of the usual or ordinary or one which has not been dealt with by any court before. The fact that a constitutional point of great importance is *expected* to be raised during the trial is not sufficient ground to transfer under this section. The exercise of the power based upon such a ground would in my opinion result in absurdity because it will at least theoretically be possible to raise some constitutional question in a good number of criminal cases where the liberty or rights of the subject are involved. It may be argued, although I have my doubts, that paragraph (b) of section 417 may apply to a first prosecution under the new amendment to section 3 of the Sedition Act, 1948; but you cannot say that of this case either. As such I have gone through the affidavits of the applicant and the respondent and found nothing to satisfy section 417 of the Criminal Procedure Code for an order of transfer to be justified.

It is my view therefore that the application as it stands has no merit and should be dismissed.

Application dismissed.

Solicitors: *Yeap & Co.*